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NO. 80-1902

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

HARALD SCHLEIFFER, a minor, by next of friend Ann Ker,
Petitioner,

vs

EDWARD J. MEYERS, as Judge of the Whitley Circuit Court, Whitley County, Indiana,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENT

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I

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II
SUMMARY OF ARGUMENT

Harald's Petition for Writ of Certiorari asks the Court to order a state court to hold a hearing on Harald's "best interest" before requiring him to live with his mother in the state of Sweden. In view of Harald's claims that he has rights under the U.S. Constitution not to be ordered to live elsewhere than in the United States, such relief would be absolutely impractical because it would demand a state court to limit the inquiry of Harald's "best interest" to the parent residing in the United States (his father) rather than consider the effect on Harald of living with his mother in Sweden. If Harald has Constitutional rights which he can assert independently of his parents' wishes or the finding of a Court as to his "best interest," such a hearing would necessarily be superfluous.

A minor does not possess an independent right to claim all rights and privileges accorded adults under the United States Constitution, especially when such claims run contrary to a state court's right to adjudicate matters of a familial nature and the existent authority of parent over child. Therefore, Harald does not have a Constitutional right to protest the state court order granting his custody during minority to his mother, regardless of the fact that he may be required thereby to live outside the United States for such period, and he does not have the Constitutional right to independent counsel for the purpose of putting in his "2¢ worth" at a hearing on the issue of his custody.

There is no compelling reason for granting certiorari in this case because there exists no novel question of Constitutional law or any conflict between decisions of different circuits on the subject.

III
ARGUMENT

A. REMEDY REQUESTED BY PETITIONER IS NOT APPROPRIATE

Petitioner seeks redress by Writ of Certiorari to require a state court to determine whether it is in his "best interest" to be removed from the confines of the United States to the custody of his mother in Sweden (Pet. for Writ of Cert., p. 10). In the same breath, Petitioner agrees with the long-standing proposition affirmed by the Seventh Circuit Court of Appeals in this case, that custody and related familial disputes are matters more suitable for determination in State, not federal courts; In Re Burris, 136 U.S. 586, 593-94, (1890).

The argument advanced in the petition to the effect that Harald deserves a hearing in State Court on the issue of his "best interest" before he can be required by color of law to reside outside the United States in itself admits the absence of a judicially

remediable abridgement of his rights under the United States Constitution. The record of this case indicates that the Indiana Court has done nothing more than defer consideration of Harald's "best interest" to the courts of the Kingdom of Sweden pursuant to a presumably valid Indiana statute which itself is not challenged in this proceeding as being Constitutionally deficient (A-3 through A-5; A-53 through A-55). It follows that this request for a hearing for the purpose of determining Harald's "best interest" is contradictory to the demand made in the same paragraph that the federal judiciary require state courts to protect Harald's "Constitutional Rights" (Pet. for Writ of Cert., p. 10). It is the potential dichotomy between the doctrine of "best interest" and the literal application of all the rights guaranteed by our Constitution to minors which Judge Sprecher addresses in his opinion (A-6 through 12).

B. MERITS OF PETITIONER'S CONSTITUTIONAL CLAIMS

Contrary to the relief requested, consideration of the Constitutional claims made by Harald results in a conclusion that they are spurious. He claims both substantive and procedural denials of rights. The claimed denial of his privileges and immunities pursuant to Article IV, Section 2, and the 14th Amendment, Section 1, and the denial of equal protection of the law pursuant to the 14th Amendment, Section 1, are substantive; the claimed denial of due process pursuant to the 5th Amendment and the 14th Amendment, Section 1, and a violation of the proscription against unreasonable seizure pursuant to the 4th Amendment, are procedural.

1. PETITIONER'S SUBSTANTIVE CLAIMS

The United States Supreme Court already has answered Harald's claims that he, a

minor, is being denied his privileges and immunities if he is forcibly removed from the United States during his minority, and that he is being denied equal protection of the law by state action ordering him removed to his mother's custody in Sweden. Petitioner cites In Re Gault, 387 U.S. 1 (1967), (Pet. for Writ of Cert., p. 12), as a general assertion of a juvenile's constitutional protections, but ignores the progeny of that decision. In McKeiver vs. Pennsylvania, 403 U.S. 528 (1971), this Court drew a line distinguishing the rights of adults and juveniles, both procedural and substantive, in its holding that juveniles are not accorded all of the procedural and substantive safeguards of our jury trial system.

Both the District Court and the Seventh Circuit Court of Appeals properly relied upon the holding of this Court in Parham vs. J. R., 422 U.S. 584 (1979) as, stare decises

for holding that Harald cannot complain of the denial of his right to liberty as a result of the state court custody award, either from a substantive or procedural approach (A-15, A-19 & 20, A-32).

2. PETITIONER'S PROCEDURAL CLAIMS

If Harald's claim that he has been denied the opportunity to assert independently certain substantive constitutional rights is spurious, so are his claims of denied procedural due process. Harald is properly only the res of the custody dispute which resulted in this action. It is not for him to determine his "best interest" under the state law and he cannot rightly complain of any lack of opportunity to be heard or represented by counsel at a hearing on the issue. As the record reflects (A-51, 52), the "best interest" hearing in this case took place in Sweden at Harald's father's request while Harald was in his father's custody. Judge

Meyers' decision simply followed Indiana Law requiring deference to that determination of Harald's "best interest" (A-4).

Harald complains that he will be illegally seized as a result of the State Court order. This claim is specious because Harald has no independent right to claim the order granting his mother custody of him is contrary to his Constitutional rights. His claim of denial of 4th Amendment rights cannot stand independently of a right to object to the purpose of the seizure.

C. REASONS FOR DENIAL OF PETITION PURSUANT TO SUPREME COURT RULES

U.S. Sup. Ct. Rule 17(a), U.S.C.A. is relied upon by Petitioner as reason for granting his Petition for Writ of Certiorari. The statements contained in his petition (p-13) do not comply with the rule because there is no conflict between a decision of the Eighth Circuit Court of Appeals and the Seventh Circuit Court of

Appeals. Petitioner would have the Court invoke jurisdiction because of a conflict between decisions of the District Court for North Dakota [Bergstrom vs. Bergstrom, 478 F. Supp. 434 (D.C.N.D. 1979)] and the decision being appealed from the Seventh Circuit. Not only does U.S. Sup. Ct. Rule 17(a), U.S.C.A. not envision such a conflict as being grounds for accepting certiorari, but Judge Sprecher indicates at page 13 of his opinion (A-13) that the district court opinion in Bergstrom vs. Bergstrom, supra, was vacated by the Eighth Circuit Court of Appeals in Bergstrom vs. Bergstrom, 623 F. 434 (8th Cir. 1980).

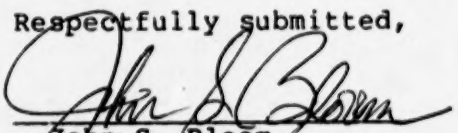
Petitioner also claims that the issues before the Court constitute a question not previously decided by this Court as a reason to grant certiorari pursuant to U.S. Sup. Ct. Rule 17(c). Respondent believes that the discussion of the merits of Petitioner's claims and supporting cases mentioned

previously in this brief adequately dispels the contention that his case is novel.

IV
CONCLUSION

The Petition for Writ of Certiorari should be denied because the opinion of the Seventh Circuit Court of Appeals in the instant case correctly applies the law as previously decided by the United States Supreme Court governing the issues and facts presented in said petition; the petition does not expose a conflict of decisions between the Circuit Courts of Appeal; and the remedy sought by Petitioner is not appropriate relief.

Respectfully submitted,



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